



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

COPY MAILED

FEB 02 2007

Munck Butrus, P.C.
PO Drawer 800889
Dallas, Texas 75380

In re Application of
Whitten et al
Application No. 10/796,428
Filed: March 9, 2004

OFFICE OF PETITIONS

LETTER REGARDING PTA

This decision is in response to Applicants' "GOOD FAITH AND CANDOR LETTER REGARDING PATENT TERM ADJUSTMENT" filed on December 8, 2006 asserting that applicants believe that they received too much PTA at the time of the mailing of the notice of allowance.

The Office thanks applicants for their good faith and candor in bring this letter to the attention of the Office.

Applicants letter is **GRANTED**. The Office will adjust the amount of APPLICANT DELAY from 47 days to 148 days. Overall, the determination of PTA at time of mailing of notice of allowance is zero (0).¹

Applicants assert that the amount of USPTO delay is one hundred and two (102) days and the amount of applicant delay is one hundred and forty-eight (148) days. Applicants assert that the Office failed to consider the "supplemental election" submission filed on February 12, 2006. Applicants assert that such delay should have been for a period of 108 days.

The Office agrees that too much PTA was awarded at the time of the mailing of the notice of allowance. The determinations of fifty-five days of Office delay is not accurate. The Office notes that the Office failed to enter into PALM that the response to the restriction requirement was noncompliant. Accordingly, the submission of a compliant election requirement on 2/13/2006 is considered a reduction under 37 CFR 1.704(c)(7).² The amount of delay is 108 days as noted by applicant in their letter regarding PTA. Accordingly, the amount of PTA asserted by applicants is persuasive.

¹The Office acknowledges that if applicant delay is greater than Office delay then there will be zero adjustment to the 20-year term. A "negative balance" by applicant would not cause the Office to reduce the 20-year term.

²The reduction is considered an omission under 37 CFR 1.704(c)(7) rather than a supplemental reply under 37 CFR 1.704(c)(8).

Any additional delays in failing to issue the application within four months of the payment of the issue fee and other requirements being satisfied under 37 CFR 1.702(a)(4) will be added at the time of the issuance of the patent and notice will be mailed to applicants in the Issue Notification letter that is mailed approximately three weeks prior to issuance.

Because applicants have submitted this letter in response to good faith and candor, the Office will not assess any fees concerning the amount of Patent Term Adjustment.

Any questions concerning this determination should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757.

Kery A. Fries
Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Adjusted PAIR calculation